

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

ANDREW L. COLBORN,

Plaintiff,

vs.

**NETFLIX, INC.; CHROME MEDIA LLC,
F/K/A SYNTHESIS FILMS, LLC; LAURA
RICCIARDI; AND MOIRA DEMOS,**

Defendants.

Civil No.: 19-CV-484

DECLARATION OF KEVIN L. VICK

I, Kevin L. Vick, under penalty of perjury and subject to 28 U.S.C. § 1746, declare as follows:

1. I am one of the attorneys for Defendants Laura Ricciardi, Moira Demos and Chrome Media LLC (collectively the “Producer Defendants”) in the above-captioned action. I have personal knowledge of the matters set forth in this declaration. I make this declaration in support of the Producer Defendants’ Motion for Summary Judgment.

Deposition Transcripts

2. Attached as Exhibit 1 is a true and correct copy of the excerpted Transcript of Kenneth Petersen's Deposition taken on May 19, 2022 in relation to the above-captioned lawsuit.

3. Attached as Exhibit 2 is a true and correct copy of the excerpted Transcript of Brenda Schuler's Deposition taken on May 20, 2022 in relation to the above-captioned lawsuit.

4. Attached as Exhibit 3 is a true and correct copy of the excerpted Transcript of Mary Manhardt's Deposition taken on June 30, 2022 in relation to the above-captioned lawsuit.

5. Attached as Exhibit 4 is a true and correct copy of the excerpted Transcript of Plaintiff Andrew Colborn's Deposition taken over two days on July 21 and 22, 2022 in relation to the above-captioned lawsuit.

6. Attached as Exhibit 5 is a true and correct copy of the excerpted Transcript of Lisa Dennis's Deposition taken on August 17, 2022 in relation to the above-captioned lawsuit.

Produced Documents

7. Attached as Exhibit 6 is a true and correct copy of Manitowoc County District Attorney's Office Internal Memo from Douglass K. Jones to M. Rohrer dated September 18, 2003 and produced by the State of Wisconsin Department of Justice as DJ001.

8. Attached as Exhibit 7 is a true and correct copy of file metadata provided by the Wisconsin Department of Justice Relating to the Word Document version of the Manitowoc County District Attorney's Office Internal Memo from Douglass K. Jones to M. Rohrer dated September 18, 2003 and produced by the State of Wisconsin Department of Justice as DJ002.

9. Attached as Exhibit 8 is a true and correct copy of Cover email from State of Wisconsin Department of Justice TIME Systems Operator Coordinator Chris Kalina to Manitowoc County Sheriff's Department Deputy Inspector Larry Ledvina with the subject line RE: Recall Requet attaching an Excel spreadsheet Steven Avery PSN 1296.xls containing dispatch log information for November 3, 2005 to November 12, 2005, dated August 28, 2006 and produced by Manitowoc County as MANITOWOC-034508.

10. Attached as Exhibit 9 is a true and correct copy of a PDF printout of the first sheet from an Excel spreadsheet Steven Avery PSN 1296.xls containing dispatch log information for November 3, 2005 to November 12, 2005, containing on rows 321–23 entries from Dispatcher LSTECKMESSER regarding license plate SWH582, dated August 28, 2006 and produced by

Manitowoc County as MANITOWOC-034510 and introduced by the Producer Defendants as Exhibit 1116 at the Deposition of Andrew Colborn on July 22, 2022.

11. Attached as Exhibit 10 is a true and correct copy of Manitowoc County Sheriff's Department, narrative dispatch records for case # 2005-8844 accompanied by a Certification of Business Records dated May 16, 2022 and introduced by Plaintiff as Exhibit 66 at the Deposition of Kenneth Petersen on May 19, 2022. On the final page, timestamped 11/03/2005 at 18:37:23, the document shows an "ATL Teresa Marie Halbach DOB 03221980. Vehicle Listed to Teresa is a 99 Toyota RAV4 DR Green in Color WI RP SWH582. Subject WA."

12. Attached as Exhibit 11 is a true and correct copy of former Manitowoc County Assistant District Attorney Michael Griesbach's handwritten notes on Wisconsin Department of Justice Avery Review dated December 17, 2003 and produced by Michael Griesbach at GRIESBACH000454-71.

13. Attached as Exhibit 12 is a true and correct copy of an email from Plaintiff to Attorney Patrick Dunphy dated January 12, 2016 seeking legal counsel and stating "The claims by the Netflix documentary mirror those claimed by the defense during the trial," produced by Manitowoc County at MANITOWOC-000158, introduced by Netflix as Exhibit 7 at the Deposition of Andrew Colborn on July 21, 2022.

14. Attached as Exhibit 13 is a true and correct copy of an email from Plaintiff to Attorney Patrick Dunphy dated January 12, 2016 in which Plaintiff states that the basis of his claim is the planting accusations in the Avery case that are in "court records" and subject to open records law records, produced by Manitowoc County at MANITOWOC-304130, introduced by Netflix as Exhibit 49 at the Deposition of Andrew Colborn on July 21, 2022..

15. Attached as Exhibit 14 is a true and correct copy of an email from Attorney Patrick Dunphy to Plaintiff to dated January 14, 2016 stating that he watched seven episodes and he saw “nothing that would lead me to take on the investigation of a potential defamation case,” produced by Manitowoc County at MANITOWOC-000246, introduced by Netflix as Exhibit 50 at the Deposition of Andrew Colborn on July 21, 2022.

16. Attached as Exhibit 15 is a true and correct copy of an email from Attorney Matthew Fisher to Plaintiff recommending a public relations professional rather than defamation litigation to address Plaintiff’s concerns with *Making a Murderer*, dated August 9, 2017 produced by Manitowoc County at MANITOWOC-000264, introduced by Netflix as Exhibit 52 at the Deposition of Andrew Colborn on July 21, 2022.

17. Attached as Exhibit 16 is a true and correct copy of an email chain between Plaintiff, Producer of the Counter-Documentary *Convicting a Murderer* (“CaM”) Brenda Schuler, and Michael Griesbach, discussing filming *CaM* and Plaintiff’s ability to publicly comment while Plaintiff’s lawsuit was ongoing, dated January 9, 2019, produced by Plaintiff at COLBORN-004614 and introduced by Netflix as Exhibit 26 at the Deposition of Andrew Colborn on July 21, 2022.

18. Attached as Exhibit 17 is a true and correct copy of a text message exchange between Plaintiff and former Calumet County District Attorney Kenneth Kratz dated October 20, 2016 regarding an appearance on DatelineNBC, produced by Plaintiff and formatted by Netflix at COLBTXTS_0002133 and introduced by the Producer Defendants as Exhibit 1005 at the Deposition of Kenneth Petersen on May 19, 2022.

19. Attached as Exhibit 18 is a true and correct copy of a text message exchange between Plaintiff and Marla Lenk, the wife of former Manitowoc County Lieutenant James

Lenk, dated November 1, 2016 regarding Kratz and Thomas Fassbender's appearance on DatelineNBC, produced by Plaintiff and formatted by Netflix at COLBTXTS_0000459–460 and introduced by the Producer Defendants as Exhibit 1006 at the Deposition of Kenneth Petersen on May 19, 2022..

20. Attached as Exhibit 19 is a true and correct copy of a text message exchange between Plaintiff and Brenda Schuler dated December 7, 2017 regarding Kratz's feedback regarding publicity for the counter-documentary, produced by Plaintiff and formatted by Netflix at COLBTXTS_0004454 and introduced by Netflix as Exhibit 76 at the Deposition of Andrew Colborn on July 21, 2022. Schuler conveyed to Plaintiff that Kratz told her, "The bottom line is if we ever hope to secure a movie or series deal, we need MaM to continue being relevant."

21. Attached as Exhibit 20 is a true and correct copy of a text message exchange between Plaintiff and Brenda Schuler dated January 25, 2018, where Plaintiff informs Schuler he cannot speak about the Avery case until his official retirement from MTSO on March 16, 2018, produced by Plaintiff and formatted by Netflix at COLBTXTS_0004696.

22. Attached as Exhibit 21 is a true and correct copy of a text message exchange between Plaintiff and Brenda Schuler dated February 14, 2018 scheduling Plaintiff's interview for *Convicting a Murderer* for March 2, 2018, produced by Plaintiff and formatted by Netflix at COLBTXTS_0004904.

23. Attached as Exhibit 22 is a true and correct copy of a text message exchange between Plaintiff and Brenda Schuler dated March 5, 2018 confirming that Plaintiff was unable to obtain phone records reflecting the November 2005 Call to Dispatch regarding Teresa Halbach's 1999 Toyota, produced by Plaintiff and formatted by Netflix at COLBTXTS_0004983.

24. Attached as Exhibit 23 is a true and correct copy of a text message exchange between Plaintiff and Brenda Schuler dated December 13, 2018 regarding revisions to Plaintiff's draft complaint for this lawsuit, produced by Plaintiff and formatted by Netflix at COLBTXTS_0006432 and introduced by Netflix as Exhibit 2024 at the Deposition of Brenda Schuler on May 20, 2022. Plaintiff shared with Schuler that he learned in 2016 from Griesbach that deceased former MTSO Detective Eugene Kusche has received the 1994 or 1995 Jail Call from Plaintiff.

25. Attached as Exhibit 24 is a true and correct copy of an excerpted medical record from Hospital Sisters Health System for Plaintiff dated December 28, 2018, where Plaintiff sought treatment for anxiety, produced by Plaintiff at COLBORN00176. This exhibit is being filed as RESTRICTED per Plaintiff's confidentiality designation pursuant to the Protective Order in this case. *See* Dkt. 189; *see also* Producer Defendants' Motion to Restrict.

26. Attached as Exhibit 25 is a true and correct copy of an excerpted medical record from Hospital Sisters Health System for Plaintiff dated February 19, 2018, where Plaintiff raises no concerns and shows no signs of anxiety, produced by Plaintiff at COLBORN00153 and accompanied by a certification of medical records by Prevea Health. This exhibit is being filed as RESTRICTED per Plaintiff's confidentiality designation pursuant to the Protective Order in this case. *See* Dkt. 189; *see also* Producer Defendants' Motion to Restrict.

27. Attached as Exhibit 26 is a true and correct copy of a transcript to an interview of Plaintiff for the unreleased documentary *Convicting a Murderer*, produced by third-party witness and producer for the documentary Brenda Schuler at SCHULER_0013 and introduced by Netflix as Exhibit 23 at the Deposition of Andrew Colborn on July 21, 2022. This exhibit is being filed

as RESTRICTED per Schuler's confidentiality designation pursuant to the Protective Order in this case. *See* Dkt. 189; *see also* Producer Defendants' Motion to Restrict.

28. Attached as Exhibit 27 is a true and correct copy of a transcript to an interview of Plaintiff for the unreleased documentary *Convicting a Murderer*, produced by third-party witness and producer for the documentary Brenda Schuler at SCHULER_0013 and introduced by Netflix as Exhibit 8 at the Deposition of Andrew Colborn on July 21, 2022. This exhibit is being filed as RESTRICTED per Schuler's confidentiality designation pursuant to the Protective Order in this case. *See* Dkt. 189; *see also* Producer Defendants' Motion to Restrict.

29. Attached as Exhibit 28 is a true and correct copy of Plaintiff's executed appearance release with Transition Studios, LLC to appear in the production of *Convicting a Murderer*, dated March 2, 2018, produced by Plaintiff at COLBORN-00488 and introduced by Netflix as Exhibit 2039 at the Deposition of Brenda Schuler on May 20, 2022.

30. Attached as Exhibit 29 is a true and correct copy of an email from Michael Griesbach to unidentified group, dated December 19, 2015 stating his thoughts as to whether Mr. Avery received a fair trial, produced by Michael Griesbach at Griesbach0014413 and introduced by Netflix as Exhibit 13 at the Deposition of Andrew Colborn on July 21, 2022.

31. Attached as Exhibit 30 is a true and correct copy of an email from Michael Griesbach to his book agent Ronald Goldfarb dated January 5, 2016 stating he is "nowhere near as certain that the cops did not plant evidence . . .," produced by produced by Michael Griesbach at Griesbach0026044 and introduced by Netflix as Exhibit 12 at the Deposition of Andrew Colborn on July 21, 2022.

32. Attached as Exhibit 31 is a true and correct copy of an excerpt of pages 31 and 32 from Michael Griesbach's book, *Indefensible*, discussing officers looking "defensive" when

testifying, published in 2016 and introduced by Netflix as Exhibit 16A at the Deposition of Andrew Colborn on July 21, 2022.

Declarations and Stipulations

33. Plaintiff Andrew Colborn provided a sworn declaration agreeing to certain stipulated facts proposed by Defendants at the time of his deposition in this lawsuit on July 21, 2022. Attached as Exhibit 32 is a true and correct copy of Plaintiff's July 21, 2022 executed declaration, including Plaintiff's handwritten annotations, as filed by Defendant Netflix, Inc. at Dkt. 265.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 16 day of September, 2022 Respectfully submitted,

s/ Kevin L. Vick
Kevin L. Vick